

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-11-30,105

In re: 1375 Fairmont Street, NW, Unit 506

Ward Four (4)

MAOW BARAKOBE
Tenant/Appellant

v.

VAN METRE COLUMBIA UPTOWN APARTMENTS, LLC
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS APPEAL

July 10, 2013

BERKLEY, COMMISSIONER. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH),¹ based on a petition filed in the Rental Accommodations Division (RAD), Housing Regulation Administration (HRA), of the District of Columbia Department of Housing and Community Development (DHCD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 45-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-501-510 (2001) and the District of Columbia Municipal Regulations, 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR 3800-4399 (2004), govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of DCRA, RACD were transferred to the Department of Housing and Community Development (DHCD), Rental Accommodations Division (RAD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008).

I. PROCEDURAL HISTORY

On July 23, 2012, OAH issued the decision and order in RH-TP-11-30,105. On February 3, 2012, the tenant/appellant, Maow Barakobe, (Tenant), filed a Notice of Appeal of the OAH decision in the Commission. The Commission received and date stamped the Tenant's appeal on February 3, 2012. On June 5, 2013, the Commission issued its Notice of Scheduled Hearing and Notice of Certification of Record. The Notice of Scheduled Hearing notified the Tenant that the hearing would occur at 11:00 a.m., Wednesday, July 10, 2013. The Commission's hearing was convened at 11:10 a.m. on July 10, 2013. Present at the Commission's hearing was Richard W. Luchs, Esq., counsel for the housing provider/appellee, Van Metre Columbia Uptown Apartments, LLC. (Housing Provider). The Tenant, Maow Barakobe, did not appear at the Commission hearing at the time designated on the Notice of Scheduled Hearing. At the commencement of the hearing, due to the absence of the Tenant, counsel for the Housing Provider requested by oral motion, that the Tenant's appeal be dismissed for lack of prosecution. The Commission took the Housing Provider's Motion to Dismiss under advisement and adjourned the hearing at 11:26 a.m.

II. THE COMMISSION'S ORDER

Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), "[i]n contested cases, ...the proponent of a rule or order shall have the burden of proof." In the instant case, the Tenant was the proponent of the Notice of Appeal and therefore had the burden of proof to prosecute the appeal in the Commission. Further, the Tenant received notice of the Commission's hearing and failed to appear at 11:00 a.m., on Wednesday, July 10, 2013. The Tenant did not contact the Commission to indicate that he would be delayed or that he had a reason for his failure to appear

at the scheduled time and date. Also, the Tenant did not request a continuance of the hearing date. The Commission's Notice of Scheduled Hearing on Appeal, page 1, warns the parties that failure to appear may result in the dismissal of the appeal. See Stancil v. District of Columbia Rental Hous. Comm'n., 806 A.2d 622 (D.C. 2002),² (affirming the Commission's dismissal of an appeal due to the failure of a party to appear for the Commission's scheduled hearing) (citing Tenants of 1755 N St., N.W. v. N St. Follies Ltd. P'ship., HP 20,746 (RHC June 21, 2000)). Accordingly, the appeal in RH-TP-11-30,105 is dismissed.

SO ORDERED.


MARTA W. BERKLEY, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

² The Commission's regulations, 14 DCMR § 3828.1 (2004), provide:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

JUDICIAL REVIEW

Pursuant to DC OFFICIAL CODE §42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission. . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals. Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

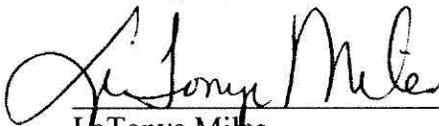
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO DISMISS APPEAL in RH-TP-11-30,105** was mailed, postage prepaid, by first class U.S. mail on this **10th day of July, 2013** to:

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